accordingly set aside, no order as to costs.

Appeal dismissed;
Cross-appeal allowed.

Solicitors: *Lovelace & Hastings; R. R. Chelliah.*

VIRUTTHASALAM & ORS. v. PHANG QUEE

[O.C.J. (Abdul Aziz J.) November 5, 1964]

[K.L. — Civil Suit No. 673 of 1961]

Land laws — Mining sub-lease — Nature of — Payment of tribute — Surrender of sub-lease — Whether such payment can be recovered — "Advance payments of tribute" — Meaning of.

In this case the defendant sub-leased certain mining lands to the plaintiffs, who paid $7,762 as advance payments of tribute. The plaintiffs subsequently surrendered the sub-lease and claimed the return of the sum paid by him, less the amount already paid by the defendant to the plaintiffs as tribute.

Held: the payment by the plaintiffs should be regarded as a loan made by them to the defendant, the loan to be repaid by deductions from any tribute upon ore which the miner may extract from the land and although in this case the tribute is no longer payable, the defendant remained liable to repay the balance of the loan.

Cases referred to:—

(1) *Gowan* v. *Christie* (1873) L.R. 2 S.C.App. 273.

(2) *Stockloser* v. *Johnson* [1954] 1 Q.B. 476.

CIVIL SUIT.

Y. C. Chin for the plaintiffs.

M. W. Maxwell for the defendant.

Cur. Adv. Vult.

Abdul Aziz J.: By a sub-lease dated 3rd January, 1961, the defendant sub-leased certain mining lands in Kerling, Selangor, to the plaintiffs. Although the opening clause in the sub-lease speaks of $7,762 as being the consideration for the sub-lease, the operative clause 2C states:—

"The sum of $7,762 shall be treated as advance payments of tribute and the sub-lessees shall be at liberty to deduct 25 per centum of the tribute payable by them hereunder until such time as the said sum of $7,762 is fully repaid and thereafter the full tribute shall be paid by the sub-lessees to the sub-lessor."

The plaintiffs, having surrendered the sub-lease with the consent of the defendant, now claim for the return of $7,500 less $445.27 already paid by the defendant to the plaintiffs as tribute. It was contended by the plaintiffs that $7,762 was a deposit and that since neither the mutual agreement nor the sub-lease makes any reference to the forfeiture of the deposit upon recission of the contract, the amount paid is recoverable.

No evidence has been adduced on either side on the facts and the question here is whether upon a true construction of the clause 2C the $7,762 paid by the plaintiffs was recoverable in law or in equity.

The words "advance payments of tribute" can be construed either as meaning that $7,762 was the pre-payment of the price of the ore to be extracted from the land or as a loan made by the plaintiffs to the defendant to be repaid by deductions from the tribute payable on the land.

Lord Cairns in *Gowan* v. *Christie* [1] said of a mining lease:

"What we call a mining lease is really, when properly considered, a sale out and out of a portion of land. It is the liberty given to a particular individual for a specific length of time to go into and under the land and to get certain things there if he can find them, and to take them away just as if he had bought so much of the soil."

A tribute can therefore be fairly described as the purchase price of the soil that the miner removes from the land. Even if the $7,762 is regarded as the pre-payment of the purchase price of the ore, equity will always relieve against the forfeiture of the purchase price if in the circumstances of the case it would be unconscionable for the sub-lessor to retain the money, see *Stockloser* v. *Johnson.* [2] Since in the present case only a small amount of ore has been extracted from the land as manifested by the tribute already accrued, it would be unconscionable for the sub-lessor to retain the money.

Having regard to the nature of the transaction and since clause 2C itself makes reference to "repayment", the above construction is untenable. The intentions of the parties must therefore be gathered from the whole *fortius contra preferentes.* It would be more reasonable to say that the $7,762 was a loan made by the plaintiffs to the defendant, the loan to be repaid by deductions from any tribute upon ore which the miner may extract from the land. Since tribute is no longer payable, that method of re-payment is no longer available to the defendant but the liability to repay the balance of the loan still remains.

There will accordingly be judgment for the plaintiffs for $7,054.73 plus interest and costs.

Judgment for the plaintiffs.

Solicitors: *Skrine & Co.; P. T. Wong & Co.*

PUBLIC PROSECUTOR v. LI CHUAN PIN

[A.C.J. (Winslow J.) November 9, 1964]

[Singapore — Magistrate's Appeal No. 149 of 1964]

Fraudulent Debtors Ordinance (Cap. 116), s. 3 — Bankruptcy Ordinance (Cap. 11), s. 113 — Obtaining credit by false pretences — Meaning of "intent to defraud".

Bankruptcy — Obtaining credit by false pretences — Fraud — "Intent to defraud".

This was an appeal by the Public Prosecutor against the acquittal of the respondent on charges that he obtained credit by false pretences under section 3 of the Fraudulent Debtors Ordinance and section 113 of the Bankruptcy Ordinance. The learned district judge found as a fact that the respondent made a false statement to the complainant, Ho Chye Choon of Nanyang Furniture Co., that he was the manager of Artisancraft Contractor, when in fact he was not. He however held that although the respondent might have acted improperly in making the false declaration there was no evidence that he had shown a criminal intent to defraud at the time he made the representation and by his subsequent conduct.

Held: as in this case the respondent had obtained credit facilities he would not have obtained if he had not represented himself to be the manager, there was an intent to defraud and the appeal must be allowed.

Cases referred to:—

(1) *R.* v. *Fred Dorrington* (1927) 20 Cr.App.R. 2.

(2) *R.* v. *Wines* (1953) 37 Cr.App.R. 197.

MAGISTRATE'S CRIMINAL APPEAL.

A. S. K. Wee (on a *fiat*) for the Public Prosecutor.

Freddie Yin for the respondent.

Winslow J.: This is an appeal by the Public Prosecutor against the acquittal of the respondent at the close of the prosecution case by the learned First Criminal District Judge on charges that he obtained credit by false pretences under section 3 of the Fraudulent Debtors Ordinance (Cap. 116) and section 113 of the Bankruptcy Ordinance (Cap. 11). The charges are in the alternative and are substantially the same.

The learned District Judge found as a fact that the respondent made a false statement to the complainant, Ho Chye Choon of Nanyang Furniture Co., that he was the manager of Artisancraft Contractor when, in fact, he was not. He however, held that although the respondent may have acted improperly in making this false representation there was no evidence that he had shown a criminal intent to defraud at the time he made the representation and by his subsequent conduct.

It is clear that he incurred a debt and obtained credit by this false pretence. Ho Chye Choon said that he accepted the order to make and deliver furniture to Malayan Life Assurance Co. because the order came from the respondent as manager of Artisancraft on the strength of the order made by Malayan Life. The position was that he believed the respondent was manager, as claimed, but at the same time he was influenced by the fact that Malayan Life were the consignees. He had looked to the respondent for payment in his capacity as manager of Artisancraft, although he was also induced to accept the sub-contract because the furniture was required by Malayan Life. It is however, significant that the complainant said that he would not have accepted the respondent's order if he had entered into a contract with Malayan Life under his own name without adding his capacity as manager of Artisancraft, because he was a bankrupt.

The respondent has been a bankrupt since 1955. Between 1958 and June 1960 his wife was the proprietress of Artisancraft with a registered address at No. 42 Cuppage Road until the business was terminated. On 1st November, 1960 a virtual man of straw called Tong Chen Chong was registered as its proprietor with an address at No. 181 Orchard Road. This witness denied that he had ever appointed the respondent to be manager and that he ever gave him permission to carry on business in the name of the firm. This firm never, in fact, did any business and it seems quite clear that the respondent used the name of Artisancraft first, through his wife, and later, through Tong Chen Chong, as a cover to enable him to carry on business activities without his having to endure the slings and arrows of bankruptcy. When he saw Ho Chye Choon in October 1960 the firm was actually non-existent and I am satisfied that the complainant accepted his order because he produced a visiting card with the name of Artisancraft on it as well as letters with letter-heads in handsome type indicating that it was a business of some magnitude when, in fact, it was not. It was in fact non-existent in October 1960.

It seems impossible to resist the inference that the object behind the respondent's representation was to circumvent any hesitation to do business with him which potential creditors might feel if they thought they were merely dealing with a bankrupt. He would thereby be unable to get ready credit unless they could be induced to give it to him on some other ground. This is exactly what happened in the case of the complainant though it was true that he was also influenced by the order from Malayan Life. It appears from the record that he also supplied furniture on the respondent's order to Rompin Mining and that this is also part of the outstanding credit which remains unpaid.

In order that a prosecution should succeed on charges of this nature, four ingredients must be satisfied —

(1) obtaining credit;

(2) a false statement;

(3) credit obtained through that statement; and

(4) an intent to defraud. (See *R.* v. *Fred Dorrington* [1]).

It is the last element, that is, intent to defraud, that the learned District Judge found lacking in the present case. Both counsel for the prosecution as well as counsel for the respondent and the learned District Judge seemed to have

approached this concept of "intent to defraud" on the basis that it was synonymous with a dishonest intent within the meaning of section 24 of the Penal Code, that is, an intent to cause wrongful gain to one person, or wrongful loss to another. In my opinion there is a clear distinction between fraud and dishonesty. Section 25 of the Penal Code describes that a thing is done fraudulently if it is done with intent to defraud.

The meaning of "intent to defraud" was carefully considered by the English Court of Appeal in *R.* v. *Wines.*[2] In that case a man falsified certain accounts to show that the firm which employed him was doing better than it was. The appellant argued that he made no monetary gain out of this. He merely did so in order to retain his employment with the firm. Lord Chief Justice Goddard said —

"Having had the advantage of a full argument, the court has come to the conclusion that the Recorder's direction can be upheld and was correct. The definition which has so often been given of the difference between an intent to deceive and an intent to defraud is to be found in Buckley J.'s judgment in *Re London & Globe Finance Corporation, Ltd.* [1903] 1 Ch. 728, at p. 732: 'To deceive is, I apprehend, to induce a man to believe that a thing is true which is false, and which the person practising the deceit knows or believes to be false. To defraud is to deprive by deceit: it is by deceit to induce a man to act to his injury. More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action.' That is the locus classicus on the subject. It has been cited with approval over and over again, and, therefore, one has to consider in all these cases whether the deceit which has been practised has merely induced, or was intended to induce, a state of mind, or has induced a course of action.

One thing that is clear is that the appellant has himself said what he intended to achieve by the falsification, namely, to remain in the service of the society; in other words, to avoid being dismissed by them, which he feared would happen if he made a proper return. If he had been dismissed because he did not show a satisfactory return, he would have lost his wages, and therefore the society, by his falsification, assuming his object to be what he said it was, would be induced to retain him in their service and pay him wages, and he was thereby getting wages from the society by means of falsifying the accounts.

For these reasons we think that the learned Recorder was justified, in view of what the appellant himself said, in directing the jury that, whether they thought that the object of falsification was to conceal the thefts — and I should think that there is very little doubt that that really was in the appellant's mind — or whether they thought that it was merely to induce the society to keep him in their employ and pay him his wages, there was in the circumstances an intent to defraud, and that, therefore, the direction was right."

In the present case the respondent who was a bankrupt obtained advantage of credit facilities he would not have obtained if he had not represented himself to be the manager of Artisancraft. As a consequence he was enabled to trade to his own financial advantage and to the injury of Ho Chye Choon. It also contributed to the financial discomfiture of Tong Chen Chong, the registered proprietor of Artisancraft. This clearly falls within the intent in *Wines'* case.

I therefore find that the learned District Judge misdirected himself on the law in finding that the element of intention to defraud was not made out. He moreover regarded the whole matter as an ordinary civil transaction in which I think he was clearly wrong because he completely ignored the fact that the respondent was a bankrupt whose order the complainant would not have accepted had he sought to contract in his own personal capacity without the representation that he was the manager of Artisancraft.

The appeal of the Public Prosecutor against acquittal was therefore allowed.

The respondent indicated that he was prepared to plead guilty to the charge under section 3 of the Fraudulent Debtors Ordinance and I convicted him thereon instead of remitting the case back to the learned District Judge lest further mistakes should occur. Justice requires an element of speed, commonsense and saving of time and expense to litigants and to the courts. In all the circumstances I felt that a term of imprisonment could be avoided inasmuch as although the respondent was guilty of obtaining credit facilities by false pretences, the element of fraudulent intent did not appear to be so very serious on the facts proved. Had the complainant not seized part of the furniture supplied, a deadlock over payment may not have arisen. He was therefore little more than technically guilty. I fined him $500 or 3 months imprisonment in default and ordered him to pay $100 as costs of the prosecution and $2,000 compensation to the complainant.

Appeal allowed.

Solicitors: *A. S. K. Wee; L. Rayner.*

LAM SOON CANNERY CO. v. H. W. HOOPER & CO.

[O.C.J. (WinslowJ.) November 9, 1964]

[Singapore — Originating Summons No. 48 of 1964]

Practice and Procedure — Foreign judgment — Registration of — Discretion.

Reciprocal Enforcement of Judgments Ordinance (Cap. 18), s. 3(1) — Registration of arbitral award converted into judgment of High Court in England — Discretion of court.

The applicants asked for an order that the registration of a judgment obtained by the respondents in the Queen's Bench Division of the High Court in England against applicants be set aside. The judgment was based on certain arbitration proceedings which ultimately went before the Appeal Board whose award against the applicants was eventually converted into a judgment of the High Court in England. The order for registration of the judgment obtained in England was attacked on the